

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA and
THE STATE OF WISCONSIN,

Plaintiffs,

v.

NCR CORPORATION, et al.

Defendants.

Civil Action No. 10-C-910

Hon. William C. Griesbach

CERTIFICATION AND DECLARATION OF JAMES HAHNENBERG

I, James Hahnenberg, declare as follows:

Introduction

1. I am employed by the U.S. Environmental Protection Agency ("EPA") at its Region 5 office in Chicago, IL. I currently serve as the Remedial Project Manager for the Lower Fox River and Green Bay Superfund Site (the "Site") and have been involved in work at the Site since 1996.

2. I am familiar with the collection of documents concerning the Site that EPA has compiled, indexed, and maintained for the Administrative Record for the Site. I am also familiar with the regular business practices, document creation practices, and document retention practices of EPA. I make this declaration based on personal knowledge, my review of pertinent records, and my consultations with other EPA employees involved with the Site.

3. I make this Certification and Declaration to establish that the documents described in and appended to this Certification are: (1) “public records” within the meaning of Federal Rules of Evidence (“FRE”) 803(8), 901(b)(7), and 902(4) and/or “records of regularly conducted activity” within the meaning of FRE 803(6) and FRE 902(11); (2) that the documents are authentic under FRE 901(b)(7), (8), 902(4), (11); and (3) that the documents and statements therein may therefore be offered as evidence of the truth of the matter stated at any trial or hearing in this matter or in a related proceeding under FRE 803(6) and 803(8).

General Certifications

4. EPA is a “public office” within the meaning of FRE 901(b)(7), a “public office or agency” within the meaning of FRE 803(8), an “agency” of the United States within the meaning of FRE 902(1)(A), and a “business” or “organization” within the meaning of FRE 803(6)(B).

5. EPA maintains on file the records documenting response actions taken by EPA and its contractors pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. These records include studies which investigate the nature and extent of contamination, enforcement documents which examine the potential liability of owners, operators, generators and transporters at Superfund sites, documents related to EPA’s selection of the remedial action at the site, records related to public participation, contractor documents, administrative orders on consent, unilateral administrative orders and consent decrees, all nature of correspondence related to a particular Superfund site, and various miscellaneous documents.

6. Appended to this declaration is a list of documents that were compiled in the creation of the exhibit list in the above-captioned case.

7. Each of the documents included in Appendix A was created at or near the time of the activities giving rise to the site investigation and cleanup efforts at the Site, and was created by, or from information transmitted by, someone with knowledge of those activities.

8. The referenced documents within exhibit range 1-1376 were compiled by EPA in the creation of the Administrative Record in this case. The maintenance of such documents and the generation of an administrative record based on such documents is the regular practice of EPA in its response activities under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

9. The procedures used for compiling and storing Superfund records are carried out according to the Federal Records Act, 44 U.S.C. Chapter 31, and Federal records retention schedules.

10. The referenced documents falling within exhibit range 1-1376 have been stored and maintained in the Superfund Document Management System (the "SDMS"), an electronic database system used by EPA for housing Superfund site records. The SDMS is located in EPA's offices and is maintained by EPA staff.

11. The referenced documents falling within exhibit range 2000-2575 have been stored and maintained in EPA's general records by EPA staff in relation to an active Superfund site. The maintenance of such documents is the regular practice of EPA.

12. The documents described herein and listed in the accompanying appendices are true and correct copies regenerated from the SDMS and from EPA's general records. Among other things, the accompanying records document the basis for the remedy at the Site that was jointly selected by EPA and WDNR.

13. The documents listed in Appendix B are documents either filed or recorded with EPA as required by law, or are public records of EPA that are from EPA offices where documents of this kind are kept.

14. The documents listed in Appendix C are true and correct copies of official records, or copies of a document that was recorded or filed with EPA as authorized by law.

15. The documents listed in Appendix D are documents that are in a condition that creates no suspicion as to their authenticity, were in a place where, if authentic, the documents would likely be, and are at least 20 years old.

16. The documents listed in Appendix E are true and correct copies of records of acts, events, conditions, or opinions that were made at or near the time by, or with information transmitted by, people with knowledge of the acts, events, conditions, or opinions, that were prepared and kept in the course of the regularly conducted activity of EPA, and making a record is a regular practice of that activity at EPA.

17. The documents listed in Appendix F are true and correct copies of documents that were prepared, compiled, and/or received by the U.S. Fish and Wildlife Service ("FWS") as part of its natural resource damage assessment efforts for the Site and transmitted to EPA and subsequently placed in the Administrative Record for the Site. EPA regularly receives and maintains such documents and places them in the administrative record for a site when EPA is proceeding with a remedial investigation and feasibility study for the same site.

18. I have no evidence that the source of, or the method or circumstances of preparation of, the originals or copies of the documents listed in the accompanying appendices indicate a lack of trustworthiness.

Specific Certifications

19. Exhibit 51 is a true and correct copy of the WDNR/EPA Fall 1989 Predator Fish PCB Sampling Summary of Results, Raw Data, and QA/QC, retrieved on April 22, 1991. Exhibit 51 is referenced as an underlying source in Exhibit 460 (EPA's Hazard Ranking System Report), and is a record of EPA that sets forth factual findings (sampling data) from predatory fish sampling conducted by WDNR and EPA in the Fox River and Green Bay as part of the Green Bay Mass Balance Study, a legally authorized investigation. Exhibit 51 is a record of acts and events, fish sampling, made near the time of the sampling by WDNR and EPA employees with knowledge of the investigation. Exhibit 51 was kept in the course of environmental sampling activities, a regularly conducted activity of EPA, and making a record of the sampling is a regular practice of that activity. The fish sampling data was stored in an electronic database, and Exhibit 51 is a computer generated database record that was placed in the Administrative Record for the Site as authorized by law. Exhibit 51 is a true and correct copy of a document that is over 20 years old and was maintained by EPA in accordance with its legal and document retention obligations.

20. Exhibit 52 is a true and correct copy of the WDNR/EPA 1989 Predator Fish PCB Fillet Sampling, Summary of Results, Raw Data, and QA/QC, retrieved on April 2, 1993. Exhibit 52 is referenced as an underlying source in Exhibit 460 (EPA's Hazard Ranking System Report), and is a record of EPA that sets forth factual findings (sampling data) from predatory fish sampling conducted by WDNR and EPA in the Fox River and Green Bay as part of the Green Bay Mass Balance Study, a legally authorized investigation. Exhibit 52 is a record of acts and events, fish sampling, made near the time of the sampling by WDNR and EPA employees with knowledge of the sampling. Exhibit 52 was kept in the course of environmental sampling

activities, a regularly conducted activity of EPA, and making a record of the sampling is a regular practice of that activity. The fish sampling data was stored in an electronic database, and Exhibit 52 is a computer generated database record that was placed in the Administrative Record for the Site as authorized by law.

21. Exhibit 416 is a true and correct copy of the WDNR/EPA Spring 1989 Predator Fish PCB Sampling, Summary of Results, Raw Data, and QA/QC, retrieved on April 19, 1991. Exhibit 416 is referenced as an underlying source in Exhibit 460 (EPA's Hazard Ranking System Report), and is a record of WDNR that sets forth factual findings (sampling data) from predatory fish sampling conducted by WDNR and EPA in the Fox River and Green Bay as part of the Green Bay Mass Balance Study, a legally authorized investigation. Exhibit 416 is a record of events and conditions, fish sampling and results, made near the time of the investigation by WDNR and EPA employees with knowledge of the investigation. Exhibit 416 was kept in the course of environmental sampling activities, a regular activity of EPA for which records are regularly made. The fish sampling data was stored in an electronic database and Exhibit 416 is a computer generated database record that was placed in the Administrative Record for the Site as authorized by law. Exhibit 416 also was uploaded into EPA's document management system for Superfund sites and sent to the U.S. Department of Justice where it was bates stamped as part of the document collection efforts in discovery on the above-captioned case. Exhibit 416 is a true and correct copy of a document that is over 20 years old and was maintained by EPA in accordance with its legal and document retention obligations.

22. Exhibit 758 is a true and correct copy of the Record of Decision ("ROD") Amendment for Operable Units ("OUs") 2-5 at the Site, dated June 2007. Exhibit 758 is an EPA record that sets forth the factual findings that the selected remedy documented in the ROD

Amendment for OUs 2-5 will meet the criteria required by CERCLA. Exhibit 758 is a record of an act, EPA's and WDNR's amendment to the ROD for OUs 2-5, that was made near the time of the amendment by information transmitted by EPA employees with knowledge of the amendment. Exhibit 758 was prepared and kept in the course of EPA's remediation planning work on a Superfund site, a regularly conducted activity of EPA, and was placed in the Site's Administrative Record in the normal course of EPA's work at the Site. Exhibit 758 was filed with EPA and placed in the Administrative Record for the Site as authorized by law. It is the regular practice of EPA to document fundamental changes to the basic features of a remedial action at a Superfund site through a ROD amendment, pursuant to the NCP, 40 C.F.R. § 300.435(c)(2).

23. Exhibit 772 is a true and correct copy of the Explanation of Significant Differences for Operable Units 2-5 at the Site, dated February 2010. Exhibit 772 is an EPA record that sets forth the explanation of certain differences that significantly changed the remedial action selected for the Site under CERCLA and the factual findings from remedial work conducted at the Site that led to those differences. Exhibit 772 is a record of an act, EPA's and WDNR's explanation of significant differences, that was made near the time of the significant changes to the remedy by information transmitted by EPA employees with knowledge of the significant changes. Exhibit 772 was prepared and kept in the course of EPA's remediation planning work on a Superfund site, a regularly conducted activity of EPA, and was filed with EPA and placed in the Site's Administrative Record in the normal course of EPA's work at the Site and as authorized by law. It is the regular practice of EPA to document significant, but not fundamental, changes to the remedial action at a Superfund site through an Explanation of Significant Differences, pursuant to the NCP, 40 C.F.R. §§ 300.435(c)(2)(i) and 300.825(a)(2).

24. Exhibit 1127 is a true and correct copy of the Administrative Order for Remedial Action under Section 106(a) of CERCLA, 42 U.S.C. § 9607(a) for the Site, Operable Units 2-5, EPA Docket No. V-W-'08-C-885. Exhibit 1127 is an EPA record that sets forth factual determinations regarding the Site requiring the remedial work to be undertaken by the Respondents, pursuant to the requirements of CERCLA Section 106(a), 42 U.S.C. § 9606(a). Exhibit 1127 is a record of an act, EPA's order directing the Respondents to implement the remedial work at the Site, made near the time of the order by information transmitted by EPA employees with knowledge of the order. Exhibit 1127 was prepared and kept in the course of EPA's remediation planning work on a Superfund site, a regularly conducted activity of EPA, and was placed into the Site's Administrative Record in the normal course of EPA's work at the Site. It is the regular practice of EPA to write and issue administrative orders for Superfund sites under the authority of CERCLA Section 106(a) when necessary. Exhibit 1127 was filed with EPA and placed in the Administrative Record for the Site as authorized by law.

25. Exhibit 1142 is a true and correct copy of the memorandum entitled "Minor Change to Selected Remedy, Lower Fox River and Green Bay Superfund Site, WI," from Thomas R. Short, Chief of the Remedial Response Branch #3 to Richard C. Karl, Director of the Superfund Division, dated June 14, 2012, explaining the attached "Technical Memorandum to Support Review of Draft 100% Design." Exhibit 1142 is an EPA record that documents the factual findings leading to a minor change in the selected remedy for the Site. Exhibit 1142 is a record of the EPA and WDNR decision to make a minor change to the Site remedy that was made near the time of the decision from information transmitted by EPA employees with knowledge of the decision. It is the regular practice of EPA to create Memoranda to File to document "non-significant or minor changes" to a remedy during the remedial design process,

pursuant to EPA guidance *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (July 1999). Exhibit 1142 was prepared and kept in the course of EPA's remediation planning for a Superfund site, a regularly conducted activity of EPA, and was filed with EPA and placed into the Site's Administrative Record in the normal course of EPA's work at the Site and as authorized by law.

26. Exhibit 1156 is a true and correct copy of the report entitled "Arrowhead Park Landfill Evaluation" prepared by Environmental Resources Management on behalf of the P.H. Glatfelter Company, dated April 1999. As documented in Exhibit 1025, a letter from C.L. Missimer, Corporate Environmental Director for Glatfelter to Mark Velleux of WDNR dated April 19, 1999, Glatfelter requested that the "Arrowhead Park Landfill Evaluation" attached to the letter, which is the same evaluation as Exhibit 1156, be placed in the Administrative Record for the Site. Exhibit 1156 is a true and correct copy of the "Arrowhead Park Landfill Evaluation" that was filed with EPA and placed in the Administrative Record for the Site as authorized by law.

27. Exhibit 1286 is a true and correct copy of a portion of P.H. Glatfelter Company's responsive submissions to a CERCLA § 104(e) Information Request issued by the U.S. Fish and Wildlife Service, bates stamped by Glatfelter GN3039814 – GN4004616. Among other things, Exhibit 1286 contains an Institute of Paper Chemistry report concerning the distribution of PCBs in pulp and paper mills and related correspondence between the Institute of Paper Chemistry and the Bergstrom Paper Company in 1976 and 1977 (bates stamped by Glatfelter GN4001680 – GN4001759). The EPA Region 5 Records Center received copies of Exhibit 1286 from the U.S. Fish and Wildlife Service, and the documents were subsequently filed with EPA and placed into the Administrative Record for the Site as authorized by law.

28. Exhibit 1308 is a true and correct copy of the Riverside Paper Corporation's (now CBC Coating, Inc.) narrative responsive submission to a CERCLA § 104(e) Information Request issued by the U.S. Fish and Wildlife Service. The EPA Region 5 Records Center received copies of Exhibit 1308 from the U.S. Fish and Wildlife Service, and the documents were subsequently filed with EPA and placed into the Administrative Record for the Site as authorized by law.

29. Exhibit 2113 is a true and correct copy of the Superfund Fox River Cooperative Agreement Application documents from WDNR to EPA Region 5, Acquisition and Assistance Branch, and subsequent associated documents. Exhibit 2113 is a record of an act, EPA's acceptance of WDNR's application for funding assistance and continued funding, made near the time of the acceptance and related approvals from information transmitted by EPA employees with knowledge of the application acceptance. I was personally involved in many of the approvals. Records of EPA funding assistance approvals and associated applications for funding assistance are prepared and kept in the course of EPA's regularly conducted Superfund activities, and making and maintaining such records is a regular practice of EPA's Superfund activities and responsibilities.

Pursuant to 28 U.S.C. § 1746, I certify and declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 11, 2013


JAMES HAHNENBERG

APPENDIX A

Documents that were created at or near the time of the activities giving rise to the site investigation and cleanup efforts at the Site, and were created by, or from information transmitted by, someone with knowledge of those activities:

1. Exhibit 51;
2. Exhibit 52;
3. Exhibit 416;
4. Exhibit 758;
5. Exhibit 772;
6. Exhibit 1127;
7. Exhibit 1142;
8. Exhibit 2113.

APPENDIX B

Documents either filed or recorded with EPA as required by law, or public records of EPA that are from EPA offices where documents of this kind are kept:

1. Exhibit 51;
2. Exhibit 52;
3. Exhibit 416;
4. Exhibit 758;
5. Exhibit 772;
6. Exhibit 1127;
7. Exhibit 1142;
8. Exhibit 1156;
9. Exhibit 1286;
10. Exhibit 1308;
11. Exhibit 2113.

APPENDIX C

Documents that are true and correct copies of official records, or copies of documents that were recorded or filed with EPA as authorized by law:

1. Exhibit 51;
2. Exhibit 52;
3. Exhibit 416;
4. Exhibit 758;
5. Exhibit 772;
6. Exhibit 1127;
7. Exhibit 1142;
8. Exhibit 1156;
9. Exhibit 1286;
10. Exhibit 1308;
11. Exhibit 2113.

APPENDIX D

Documents that are in a condition that creates no suspicion as to their authenticity, were in a place where, if authentic, the documents would likely be, and are at least 20 years old:

1. Exhibit 51;
2. Exhibit 416;
3. Exhibit 1286 (noted portions).

APPENDIX E

Documents that are true and correct copies of records of acts, events, conditions, or opinions that were made at or near the time by, or with information transmitted by, people with knowledge of the acts, events, conditions, or opinions, that were prepared and kept in the course of the regularly conducted activity of EPA, and making a record is a regular practice of that activity:

1. Exhibit 51;
2. Exhibit 52;
3. Exhibit 416;
4. Exhibit 758;
5. Exhibit 772;
6. Exhibit 1127;
7. Exhibit 1142;
8. Exhibit 2113.

APPENDIX F

Documents that are true and correct copies of documents prepared, compiled, and/or received by the FWS as part of its natural resource damage assessment efforts for the Site and transmitted to EPA and subsequently placed in the Administrative Record for the Site. EPA regularly receives and maintains such documents and places them in the administrative record for a site when EPA is proceeding with a remedial investigation and feasibility study for the same site:

1. Exhibit 883;
2. Exhibit 891;
3. Exhibit 1149.